

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BILLY BRANTLEY, et. al. : Case No. C-I-01-861

Plaintiffs, : Judge Susan J. Dlott

vs. :

CINERGY CORP. : AFFIDAVIT OF
Defendant. : JILL T. O'SHEA, ESQ.

STATE OF OHIO)
) ss..
COUNTY OF HAMILTON)

Comes now affiant, Jill T. O'Shea, Esq., after being duly cautioned and sworn, deposes and states as follows:

1. That Jill T. O'Shea, Esq. is defense counsel in the above-captioned matter.
2. That Defendant, Cinergy Corp., requires four (4) additional pages in order to fully and adequately present all relevant factual and legal arguments in support of Defendant, Cinergy Corp.'s Motion for Summary Judgment as to Plaintiff, Todd Tolbert.
3. That Defendant requires the additional pages to fully address the factual allegations including, but not limited to, alleged failure to promote, weight restriction issue, other alleged unfair discipline, alleged hostile work environment and policies, failure to take advantage of corrective opportunities and procedural posture.
4. That, Defendant, Cinergy Corp., is further required to address the substantial legal arguments including, but not limited to, Cinergy Corp. is not an employer under Title VII;

Plaintiff's race discrimination claims under Title VII and Ohio Law are not actionable as a matter of law including the sub-issues that Plaintiff's claims are barred as untimely, Plaintiff offers no direct evidence of race discrimination in any employment action, Plaintiff cannot demonstrate a prima facie of race discrimination as a matter of law, Plaintiff cannot demonstrate a prima facie case because he cannot demonstrate a materially adverse employment action, Plaintiff cannot demonstrate a prima facie case that similarly situated employees were treated more favorably, CG&E's legitimate, non-discriminatory reason justified its actions as a matter of law and Plaintiff is unable to demonstrate pretext as a matter of law; Plaintiff's racial harassment claims under Title VII are not actionable as a matter of law including the sub-issues, Plaintiff cannot demonstrate a hostile work environment as a matter of law and Defendant, CG&E, exercised reasonable care to prevent and promptly correct any harassing behavior and Plaintiff failed to take advantage of corrective opportunities; and Plaintiff has failed to demonstrate a prima facie case of disability discrimination as a matter of law.

5. That Defendant, Cinergy Corp., has complied with Rule 7.2(3) of the Local Rules of the Southern District of Ohio by including a combined table of contents and summary of arguments.

6. That she has firsthand knowledge of the above.

FURTHER AFFIANT SAITH NAUGHT.

Jill T. O'Shea

NOTARY OF PUBLIC

Sworn to and subscribed in my presence this 1st day of August, 2003.

Susan M. Wolfram
Notary Public

SUSAN M. WOLFRAM
Notary Public, State of Ohio
My Commission Expires Sept. 5, 2005

Respectfully submitted,

Jill T. O'Shea
Jill T. O'Shea (0034692)
Attorney for Defendant, Cinergy Corp.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served via hand-delivery this 1st day of August, 2003 to:

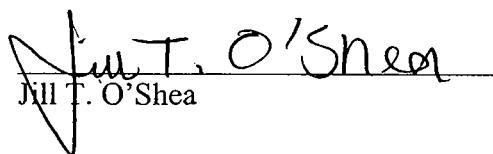
Paul H. Tobias
David D. Kammer
TOBIAS, KRAUS & TORCHIA, LLP
414 Walnut Street
Suite 911
Cincinnati, OH 45202

I certify that a copy of the foregoing pleading was served overnight mail this 1st day of August, 2003 to:

David W. Sanford
Eric Bachman
Charles Dixon
Gordon, Silberman, Wiggins & Childs, P.C.
7 DuPont Circle, N.W.
Suite 200
Washington, D.C. 20036

I certify that a copy of the foregoing pleading was served regular mail this 1st day of August, 2003 to:

Grant E. Morris
Law Offices of Grant E. Morris
7 DuPont Circle, N.W.
Suite 250
Washington, D.C. 20036


Jill T. O'Shea
Jill T. O'Shea